

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-149611-10

Date:

July 26, 2011

### LEGEND:

Taxpayer =

Subsidiary 1 =

Subsidiary 2 =

New Parent =

Date A =

Company Official =

Tax Professional =

Dear \_\_\_\_\_ :

This letter responds to a letter dated December 2, 2010, submitted on behalf of Taxpayer, requesting an extension of time under § 301.9100-3 of the Procedure and Administration regulations to file an election under § 1.382-9(i) not to have the provisions of § 382(l)(5) apply to an ownership change in a title 11 or similar case (the "Election").

Taxpayer wholly owns Subsidiary 1 and Subsidiary 2. Prior to Date A, Taxpayer was the common parent of an affiliated group consisting of itself, Subsidiary 1, and Subsidiary 2 (the "Taxpayer Group"), which filed consolidated Federal income tax returns. On Date A, New Parent acquired all of the stock of Taxpayer in a transaction the taxpayer represents was not a reverse acquisition within the meaning of § 1.1502-75(d)(3). As a result of the acquisition, on Date A, the Taxpayer Group terminated pursuant to § 1.1502-75(d)(1).

On Date A, Taxpayer Group was a loss group and the acquisition of Taxpayer stock by New Parent was an ownership change as defined in § 382(g) and § 1.1502-92(b)(1)(i). Immediately before the ownership change on Date A, Taxpayer was under the jurisdiction of a court in a title 11 case. Taxpayer has represented that it does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code and the new position requires a regulatory election for which relief is requested.

Section 382(l)(5) provides that if certain requirements are met, § 382(a) shall not apply to an ownership change. If § 382(l)(5) applies, certain limitations are placed on a corporation.

Section 382(l)(5)(H) provides that a new loss corporation may elect, subject to such terms and conditions as the Secretary may prescribe, not to have the provisions of § 382(l)(5) apply. Any such election must be made by the due date (including any extensions of time) of the loss corporation's tax return for the taxable year which includes the change date. Section 1.382-9(i).

The Election was required to be filed by the due date (including any extensions of time) of Taxpayer Group's tax return for the taxable year ending Date A, but for various reasons a valid Election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad) under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.382-9(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Taxpayer to file the Election, provided Taxpayer acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

The information, affidavits, and representations submitted by Taxpayer, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service, and that Taxpayer reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the Election. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Taxpayer has shown that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3, until 45 days from the date on this letter, for Taxpayer to file the Election.

The above extension of time is conditioned on the taxpayers' (Taxpayer, Subsidiary 1, and Subsidiary 2) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is

expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel (Corporate)